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6 IN THE UNITED STATES DISTRICT COURT
7
8 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 DAVID JONES,

13 Defendant.

CASE NO. 1:20-CR-00115-DAD-BAM

STIPULATION TO CONTINUE; AND ORDER

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15 This case is set for a hearing on October 13, 2020, which the parties stipulate to continue to
16 December 9, 2020, for the reasons set forth below. On March 17, 2020, this Court issued General Order
17 611, which suspends all jury trials in the Eastern District of California scheduled to commence before
18 May 1, 2020. This General Order was entered to address public health concerns related to COVID-19.

19 Although the General Order addresses the district-wide health concern, the Supreme Court has
20 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
21 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
22 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
23 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
24 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
25 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
26 or in writing").

27 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
28 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances

are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff, United States of America, by and through its counsel of record, the United States Attorney for the Eastern District of California and the defendant, DAVID JONES, by and through his counsel, hereby agree and stipulate to continue this matter until December 9, 2020.

The defendant also agrees to exclude for this period of time any time limits applicable under 18 U.S.C. § 3161. The parties agree that the continuance represents the reasonable time necessary for effective preparation of counsel. 18 U.S.C. § 3161(h)(7)(A)-(B)(iv). In support thereof, the parties stipulate that:

- 1 1. This matter is set for a status hearing on October 13.
- 2 2. The government provided the defendant with discovery that includes and some supplemental
- 3 discovery. The defense is continuing to review those documents. The parties are also
- 4 discussing a resolution of this case and need time to do so.
- 5 3. Therefore, the parties agree that a continuance until December 9, 2020, is warranted because
- 6 the defense needs time to review the discovery.
- 7 4. The parties stipulate that the period of time from October 13, 2020, through December 9,
- 8 2020, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and
- 9 (iv) because it results from a continuance granted by the Court at defendants' request on the
- 10 basis of the Court's finding that the ends of justice served by taking such action outweigh the
- 11 best interest of the public and the defendant in a speedy trial.

12 IT IS SO STIPULATED.

13 Dated: October 7, 2020

MCGREGOR W. SCOTT
United States Attorney

14
15 By: /s/ THOMAS NEWMAN
THOMAS NEWMAN
16 Assistant United States Attorney

17 Dated: October 7, 2020

/s/ Meghan McLoughlin
Attorney for Defendant
18 DAVID JONES
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ORDER

IT IS ORDERED that the October 13, 2020 hearing in this matter is continued until **December 9, 2020, at 1:00 pm before Magistrate Judge Barbara A. McAuliffe.**

IT IS FURTHER ORDERED THAT the period of time from October 13, 2020, through December 9, 2020, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), 3161(h)(7)(B)(i) and (iv), because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.
IT IS SO ORDERED.

Dated: **October 7, 2020**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE